The Court: You said 37 was Bayou.

Mr. Fennelly: Yes.

The Court: Is it?

Mr. Fennelly: Yes.

The Court: Yes. Well, that is what you said. And 38 is also Bayou.

Mr. Fennelly: 38—no, 38 is Kastel.

The Court: I see.

Mr. Fennelly: And there is no objection to that.

The Court: What year is that for, Mr. Fennelly?

(172) Mr. Fennelly: For 1938. Well, there is the general objection of prior in time to the indictment years, your Honor.

The Court: Well, the objections to 38, 37 are overruled.

Mr. Fennelly: No. 32 I think you passed on yesterday, didn't you?

The Court: Yes, that has been received.

Mr. Pierpoint: Your Honor, just to clear up a point on the record, am I correct in assuming that Government's Exhibit 15, which was the income tax return of Frank Costello for the year 1936, which was admitted subject to connection, has now been connected.

Mr. Fennelly: I object to it, your Honor, as I did before, on the ground that it is prior to the taking-off point of the Government, on their opening.

Mr. Pierpoint: Your Honor, counsel had a witness—

The Court: Didn't that come in in one of the—in connection with part of the other testimony yesterday?

Mr. Pierpoint: Your Honor, counsel had one of the Government witnesses read from this exhibit.

Colloquy

The Court: Yes.

The Clerk: May I have those exhibits that will now be received in evidence?

(173) Mr. Pierpoint: Your Honor, the Government at this time will not read from these exhibits now in evidence.

(Government's Exhibits 38, 37, 36, 35, 33 and 34 received in evidence.)

Mr. Fennelly: May I read from some of the exhibits then, your Honor?

The Court: You may.

Mr. Fennelly: I read from the Bayou Novelty 1935 partnership income tax return, showing a net income of $506,501.

I read from the Phil Kastel partnership return for the calendar year 1936, showing on the bottom the names of the partners, Philip Kastel, Frank Costello, giving the address of Mr. Costello as 241 Central Park West, New York City. The return is sworn to by Mr. Kastel, and there is an affidavit attached, stating that it was prepared by James D. Murphy.

Exhibit 34, partnership return of Bayou Novelty for a fiscal year September 1, 1936, ending August 31, 1937. Shows net income of $451,685.71. And on this Bayou return, as on all of them, so I won't have to repeat it, that is, Bayou Novelty, the partners are shown to be D. Geigerman, H. Geigerman, P. Kastel and G. E. Brainard.

(174) Exhibit 35, which is the partnership return of Phil Kastel—Philip Kastel—again showing the partners to be Philip Kastel and Frank Costello, giving his address, for the calendar year 1937. Showed reported income to the Government of $132,-

923.88. And the return shows that that was also the gross. There are no deductions.

Exhibit 36 is a Bayou Novelty Company return for a fiscal year beginning June 20, 1937, and ending March 31, 1938, and reported to the Government a net income of $140,977.22.

Exhibit 37 is a partnership return of Bayou Novelty for the fiscal year beginning April 1, 1938, and ended December 31, 1939, and it is marked on the top "Final Return; Completely liquidated at December 31, 1938," and showing $26,018.20.

And Exhibit 38 is the partnership return of Philip Kastel for the calendar year 1938 and shows income of $44,646.15.

Mr. Seymour: Would your Honor care to have the customary recess before the next witness is called?

The Court: Oh, yes, yes, we will take our recess.

(Jury retires.)

(Recess.)

(175) Mr. Seymour: The Government calls Howard T. Hitchcock.

Mr. Fennelly: Your Honor, I omitted yesterday to ask to have marked for identification the copy of the grand jury minutes that your Honor inspected in connection with my examination of the witness Ronayne.

The Court: Oh, yes. Are they here in court now?

Mr. MacMahon: I do not believe they are, your Honor. We will—

The Court: Bring them up this afternoon and we will have them marked.

Howard T. Hitchcock—for Government—Direct

HOWARD T. HITCHCOCK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Hitchcock, where do you live? A. 681 Melrose Avenue, Bronx, New York.

Q. And what is your occupation? A. I am the assistant manager of the Corn Exchange Bank, 260 Columbus Avenue.

Q. Is there a name for the branch of which you are manager? A. Hudson River.

Q. How long have you been employed by the Corn (176) Exchange Bank Trust Company? A. Twenty years.

Q. Are you familiar with the books and records of the bank? A. I am.

Q. Can you tell us, please, whether the books and records of the bank show any accounts in the name of Frank Costello or Loretta B. Costello during the period 1937 through 1949? A. They do.

Q. Have you produced records relating to those accounts? A. Yes, sir.

Q. May I have them please? A. (Witness hands to Mr. Seymour.)

Mr. Seymour: Would you mark this for identification, please.

(Marked Government's Exhibit 39 for identification.)

Mr. Seymour: And would you mark this for identification.

(Marked Government's Exhibit 40 for identification.)

Mr. Seymour: And would you mark these.

(Marked Government's Exhibit 41 for identification.)

Q. Mr. Hitchcock, I hand you Government's Exhibit 39 for identification and I ask you if you can tell us what that is, please. A. That is the signature card pertaining to the account of Frank Costello.

Q. Maintained in your branch? A. That is right.

Q. I hand you—

(177) The Court: Does it represent the signature of Frank Costello?

The Witness: Yes, sir, it does.

The Court: It contains it?

The Witness: Yes.

Q. I hand you Government's Exhibit 40 for identification and I ask you if you can tell us what those are. A. These are ledger sheets and facsimiles of the bank account from March 14, 1945 through December of 1949.

Q. Generally, what do those documents show, Mr. Hitchcock? A. Deposits, withdrawals, and balances.

Q. Now, Mr. Hitchcock, you say—

The Court: Pardon me. Is this the account that you just referred to the account of Frank Costello?

The Witness: Yes, sir.

The Court: Very well.

Q. Mr. Hitchcock, you say that certain of those documents are facsimiles. Will you explain what you mean? A. Well, sir, since 1949 we have used the single post system and we photograph all records. These facsimiles are taken from the microfilm.

Q. At about what time in 1949 did you institute that system? A. March 2nd.

Q. Now, are the microfilm reels from which those (178) facsimiles were taken available for inspection upon direction of the Court? A. They are.

Q. Mr. Hitchcock, I show you Government's Exhibit 41 for identification and I ask you if you can tell us what those are. A. These are deposit slips on the account of Frank Costello from April 15, 1946 through December 16, 1949.

The Court: What are those dates again, please?

The Witness: April 15, 1946, December 16, 1949.

Q. Mr. Hitchcock, are the records which you have identified as Government's Exhibits 39, 40 and 41 for identification records kept by your bank in the regular course of business? A. They are.

Q. And is it the regular course of the business of your bank to keep such records? A. It is.

Mr. Seymour: If your Honor please, at this time the Government offers Government's Exhibits 39 for identification, 40 for identification and 41 for identification, asking leave to substitute photostats for Exhibits 39 for identification and 40 for identification so that the original records may be returned to the bank?

The Court: Very well.

(A pause.)

Mr. Seymour: With the Court's permission, may we proceed to mark other exhibits for identification at (179) this time?

The Court: You may hand them to the clerk, yes.

Mr. Seymour: Mark these in that order (indicating).

(Marked Government's Exhibit 42 for identification.)

The Court: Pass it up and let me see it, so I may make a note of it.

(Exhibit handed to the Court.)

(Marked Government's Exhibit 43 for identification.)

Mr. Fennelly: On Exhibit 39 may I interrogate the witness preliminarily about it?

The Court: Yes.

Preliminary Cross Examination by Mr. Fennelly:

Q. Mr. Hitchcock, the handwriting, the signature and address, are they in Mr. Costello's handwriting? A. Well, sir, I can't say because I wasn't there at the time the account was opened.

Q. You couldn't tell even whether the signature was? A. I believe the signature to be, yes, but the rest of the—

Q. You have never seen him write? A. No, sir.

Q. How about the rest of the writing, address? A. That I can't pass on, as I say.

Q. The word "none"— A. That was—

(180) Q. —was put on by somebody in the bank? A. The officer who opened the account.

Mr. Fennelly: I have no objection to that card, your Honor, except the word "none" on there was put on, not by the defendant, by someone else.

The Court: Let me see it.

Mr. Seymour: If your Honor pleases, I submit this is a record kept in the regular course of business and is admissible as such, although the weight about individual entries may be questioned by counsel. They are none the less admissible.

The Court: Yes, it may be received.

Mr. Seymour: May we substitute a photostat for the original at this time, your Honor?

The Court: Yes, you may do that now.

(Government's Exhibit 39 for identification received in evidence.)

(Marked Government's Exhibits 44 through 47, inclusive, for identification.)

Mr. Fennelly: Might I inquire preliminarily about another exhibit?

The Court: Yes.

By Mr. Fennelly:

Q. Mr. Hitchcock, would you mind telling me, if you know, whether on this first deposit ticket, under (181) date of April 15, whether that writing was on there, which is there in pencil, at the time the deposit was made? A. No, sir, that is put on by the teller when he receives the deposit, marking the bank it is cleared through and—

Q. And it is not on the others, is it? A. Well, from 1948 on we installed the IBM machines and the teller ceased to do that, marking out the deposit ticket.

Q. Do you know whose handwriting it is? A. Yes, I do. That is a teller by the name of Miss McAuley.

Mr. Fennelly: No objection.

Mr. Seymour: May 41 be admitted, your Honor?
The Court: Yes.

(Government's Exhibit 41 for identification received in evidence.)

Mr. Fennelly: Might I inquire about the next exhibit, your Honor?
The Court: Yes.

By Mr. Fennelly:

Q. Mr. Hitchcock, may I ask you about Exhibit 40 for identification. Were these arrows—when were they put on there; do you know? A. Every end of the month we stamp them, we put (182) the stamp on at the end of the month verifying the balance through the customer's statement.

Q. On the last page, these Recordaks, there appears to be an item that isn't on there. Isn't that something you didn't take? A. No, that was a mispost on the account, and the bookkeeper did not erase it cleanly on the sheet.

Q. So that the last balance is as of December 21— A. That is correct.

Q. Nineteen forty— A. Nine.

Mr. Fennelly: No objection.

Mr. Seymour: Your Honor, could we substitute photostats for so much of this exhibit, as these are original records of the bank?

The Court: Yes.

Mr. Fennelly: I wonder if we could do the substitution after the examination of the witness.

The Court: Well, the originals will be here.

Mr. Seymour: They will certainly be available for his examination.

(Government's Exhibit 40 for identification received in evidence.)

Direct Examination by Mr. Seymour (Continued):

Q. Now, Mr. Hitchcock, I hand you Government's Exhibits 39, 40 and 41 now in evidence, and I ask you, (183) first, with respect to Government's Exhibit 39, which you have identified as the signature card of Frank Costello, if you can tell us, please, the date on which that account was opened? A. February 16, 1944.

The Court: What is that date?

The Witness: February 16, 1944.

Q. Now, Mr. Hitchcock, would you look, please, at Government's Exhibit 40? Those, as I recall, are the ledger sheets and statements relating to that account? A. That is correct.

Q. And what period do they relate to? A. March 14, 1945 through December of 1949.

Q. I wonder, sir, if you would please tell us the end of the year balance as of Decmeber 31 of each year for the years 1945, 1946, 1947, 1948 and 1949 in that account. A. The year ending 1945, $19,917.05.

Year ending 1946, $7,714.43.

Year ending 1947, $62,356.48.

Year ending 1948, $52,234.51.

Year ending 1949, $36,467.16.

Q. Mr. Hitchcock, have you compared the deposit tickets, which are Government's Exhibit 41, to the ledger sheets and statements? A. Yes, sir, and we were unable to obtain the (184) first two during the year of 1946.

Q. Apart from those two, Mr. Hitchcock, does Government's Exhibit 41 constitute all the deposit tickets for all

deposits made in the account of Frank Costello during the years 1946 through 1949? A. They do.

Q. Can you tell us, sir, from those deposit tickets, in what form all of those deposits were made? A. These deposits were made in check form.

Q. Were there any deposits in cash in Frank Costello's account, from the deposit tickets marked as Government's Exhibit 41? A. No, sir.

Q. And except for the two deposit tickets that are missing, Government's Exhibit 41 shows all deposits during the years 1946 through 1949 in that account were by check and check alone? A. That is correct.

Q. Now, Mr. Hitchcock, I hand you Government's Exhibit 42 for identification, 43 for identification, and 44, '5, '6 and '7 for identification. Would you tell us first, please, what Government's Exhibit 42 for identification constitutes? A. This is the signautre card on the account of Loretta B. Costello.

Q. On the account maintained in your branch? A. That is correct.

(185) Q. Would you tell us what Government's Exhibit 43 for identification constitutes? A. They are the ledger sheets and facsimiles pertaining to the account of Loretta B. Costello.

Q. When you refer to the facsimiles, Mr. Hitchcock, are these facsimiles made in similar fashion to the ones contained in Government's Exhibit 40? A. They are.

Q. Do I understand that microfilms were used starting March 2, 1949? A. That is correct.

Q. And, generally, what do those ledger sheets show? A. Deposits, withdrawals and balances.

Q. Now, sir, would you look at Government's Exhibits those are? A. These are deposit tickets of deposits made to the account of Loretta B. Costello.

44, '5, '6 and '7 for identification and tell us, please, what

Q. Now, Mr. Hitchcock, are all of the records constituting Government's Exhibits 42 for identification through 47 for identification records kept by the bank in the regular course of business? A. They are.

Q. And is it the regular course of the bank's business to keep such records? A. Yes, sir.

Mr. Seymour: At this time, if your Honor please, the Government offers in evidence Government's Exhibits 42 for identification through 47 for identification, (186) asking leave to substitute photostats for Government's Exhibits 42 and 43 for identification?

(Mr. Seymour hands exhibits to Mr. Fennelly.)

Mr. Seymour: If your Honor please, while counsel is studying the Government's present offer, may I have additional documents marked for identification?

The Court: You may.

(Marked Government's Exhibits 48, 49, 50, 51, 52, 53 and 54 for identification.)

Mr. Seymour: Any objection, Mr. Fennelly?

Mr. Fennelly: No.

Mr. Seymour: If your Honor please, counsel states that he has no objection to Government's Exhibits 42 for identification through 47 for identification. May they be admitted at this time?

The Court: They will be admitted.

Mr. Seymour: And may photostats be substituted for Government's Exhibit 42 for identification and the original ledger sheets that are part of Government's Exhibit 43 for identification?

The Court: Yes.

(Government's Exhibits 42, 43, 44, 45, 46 and 47, inclusive, for identification received in evidence.)

(Marked Government's Exhibit 55 for identification.)

(187) Q. Now, Mr. Hitchcock, I hand you Government's Exhibits 42 to 47 now in evidence and I ask you, first, sir, to look at Government's Exhibit 42. And can you tell us from that when the account of Loretta B. Costello in your bank was opened? A. September 7, 1937.

Q. Now, would you look at Government's Exhibit 43, constituting the ledger sheets and statements on that account? Can you tell us from that exhibit the balances on deposit in that account as of December 31 of the years 1945 through 1949?

The Clerk: Government's Exhibit 56 marked for identification.

A. The year ending—

The Court: Wait a minute. Now, we had better get this marking done before we go ahead.

Would you read the last question, please?

(Record read.)

A. Year ending 1945, $4,444.61.
Year ending 1946, $6,622.54.

The Court: What is that? Six thousand—

A. $6,622.54.
Year ending 1947, $3,971.59.

Year ending 1948, $24,210.65.

Year ending 1949, $24,889.95.

(188) Q. Mr. Hitchcock, would you please look at Government's Exhibits 44, '5, '6 and '7, which we understand to be the deposit tickets on the account of Loretta B. Costello for 1946 through 1949? A. That is correct.

Q. Can you tell us, please, have you compared those deposit tickets with the ledger sheets and statements, and can you tell us whether the deposit tickets reflect all of the deposits made in that account during that period? A. No, sir. We lack seven tickets, which we could not locate.

Q. Can you identify which particular deposits were missing? A. Yes, I can. May 7, 1946, $1,200.

July 2, 1946, $1,639.39.

July 9, 1946, $1,500.

August 2, 1946, $1,200.

August 29, 1946, $212.14.

April 4, 1949, $174.80.

November 5, 1949, $230.50.

Q. Mr. Hitchcock, I believe you said that one of the deposit tickets missing was dated July 2, 1946. Would you please check the ledger sheets and give us the amount of that deposit again? A. July 2, 1946?

Q. Yes, sir.

(189) Mr. Fennelly: He said, $1,639.39.

A. $1,639.35.

Q. I believe before you said that the last figure was 9 rather than 5? A. I believe I did.

Q. In fact, the correct final figure is 5? A. That is correct.

Q. Apart from those deposit tickets which you have just listed as being missing, do Government's Exhibits 44, '5, '6 and '7 constitute the deposit tickets for all deposits made in the Loretta B. Costello account for the years 1946 through 1949? A. They do.

Howard T. Hitchcock—for Govt.—Preliminary Cross

Q. Have you studied those deposit tickets, Mr. Hitchcock, to determine which deposits were made by cash and which by check? A. Yes, sir.

Q. And have you prepared a tape reflecting your calculations? A. I have.

Q. I hand you Government's Exhibit 48 for identification and I ask you if that is the tape you have just referred to? A. It is.

Mr. Seymour: If your Honor please, I offer Government's Exhibit 48 for identification in evidence.

Mr. Fennelly: May I inquire of the witness first, your Honor?

The Court: Yes, you may.

(190) Has the witness stated what these figures purport to be?

Mr. Seymour: Your Honor, I am not certain that he has. Perhaps he should.

The Court: All right.

By Mr. Seymour:

Q. Mr. Hitchcock, can you tell us, please, what figures are represented on the tape which has been marked Government's Exhibit 48 for identification? A. That is a listing of the deposit tickets on the account of Loretta B. Costello, broken down by check and by cash received on deposit.

Q. Does it relate to the deposit tickets which have been admitted in evidence as Exhibits 44 through 47? A. Yes, it does.

Preliminary Cross Examination by Mr. Fennelly:

Q. Mr. Hitchcock, on the top of this exhibit you have "Account of Loretta B. Costello." Then the first ink mark

down on the side, "Deposits 1946." What is that supposed to indicate? A. That is the total received on deposit for that year compiled from the deposit tickets.

Q. Total of the deposits regardless of whether by cash or check? A. That is correct.

Q. Is that correct? A. Yes.

(191) Q. You have done the same thing for the other years, is that right? A. Subsequent years, that is right.

Q. After the third column of figures you have some figures in there. What do they mean? A. That is just the proof of the breakdown of the cash and checks on deposit against the total amount deposited.

Q. In other words, they are nothing additional? A. No, sir.

Q. And the same is true of the figures at the end? A. That is right.

Q. Of the entire list? A. That is correct.

Mr. Fennelly: Subject to check, your Honor, no objection.

The Court: Very well.

Mr. Seymour: May it be received, your Honor?

The Court: Yes, it may.

(Government's Exhibit 48 for identification received in evidence.)

Direct Examination by Mr. Seymour (Continued):

Q. Mr. Hitchcock, I hand you Government's Exhibit 48 for identification and ask you, please, if you will tell us the total deposits reflected on the deposit tickets which have already been marked in evidence on (192) the account of Loretta B. Costello for the respective years 1946, 1947, 1948 and 1949; how much of those deposits were by cash and how much were by check? A. Total deposits, year of

1946, $20,138.24. The cash received on deposit for 1946, $9,000. By check, $11,138.24.

Q. Mr. Hitchcock, would you raise your voice a little bit? A. Surely.

Q. So all can hear. A. Total deposits, 1947, $19,883.37. Cash on deposit, 1947, $19,230. Checks on deposit, 1947, $653.37.

Total deposits, 1948, $42,736.90.

The Court: What was that?
The Witness: $42,736.90.

A. (Continuing) Cash deposited, 1948, $11,021. Checks deposited, 1948, $29,715.90.

Total deposits, 1949, $19,232.34.
Cash deposited, 1949, $1,500.
Checks deposited, $17,732.34.

The Court: What is the total?
The Witness: On the check deposits?
The Court: Of the 1949, total deposits?
The Witness: $19,232.34.

Q. Mr. Hitchcock, as I understand your testimony, the account of Frank Costello was opened on February 16, (193) 1944 and the account of Loretta B. Costello was opened on September 7, 1937? A. That is correct.

Q. You have produced here today ledger sheets and statements on both of those accounts from March 1945 through the end of December 1949. Can you tell us, please, whether ledger sheets and statements were prepared with respect to those accounts from the dates of their opening? A. Yes, sir, they were.

Q. Can you tell us where those ledger sheets are? A. They have been destroyed.

Q. Would you tell us the practice with respect to the

destruction of records by your bank? A. They are kept in our warehouse until the seven years' time limit expires. Then they are burned in the furnace.

The Court: Seven years from the time—beginning when?

The Witness: From the time the ledger is put into effect, the current year.

Q. Could you tell us for how long the ledgers are generally are kept in your branch before they are sent to the warehouse? A. Approximately one year.

Q. Mr. Hitchcock, from your knowledge of the bookkeeping procedures of the bank, can you tell us whether the ledger sheets for those two accounts of Frank Costello (194) and Loretta B. Costello from the date of their opening up until the date of the records you have produced here today were records kept in the regular course of business and whether it was the regular course of business to keep such records? A. It was.

Q. And were they substantially similar to the records you have produced here today? A. Yes, sir.

Mr. Fennelly: I take it by the last question that means physical form.

The Court: I assume so.

Mr. Seymour: Let me add a further question on there, your Honor.

Q. Do they also, Mr. Hitchcock, reflect generally the type of entry that is reflected on these ledger sheets?

The Court: That is, you mean do they or did they?

Q. (Continuing) Did they? A. Yes, sir, they did.

Q. Withdrawals, deposits? A. And balances.

Q. Mr. Hitchcock, I hand you Government's Exhibits 49 for identification through 56 for identification and ask you to study those, please, and tell us what they are. A. These are Recordaks, facsimiles of checks which have been reproduced from our microfilm.

(195) Q. Are they checks drawn on the account of Frank Costello and Loretta B. Costello? A. Yes, sir.

Q. Now, sir, the microfilm reels from which those facsimiles are made, are they records kept in the regular course of business? A. They are.

Q. Is it the regular course of business to keep those records? A. It is.

Q. Are the reels themselves available for inspection upon direction of the Court? A. They are.

Mr. Seymour: At this time, if your Honor please, the Government offers in evidence Government's Exhibits 49 for identification through 56 for identification.

The Court: Would you let me see from 53 on, while Mr. Fennelly is examining the others?

Mr. Seymour: Would you mark these for identification, please?

(Marked Government's Exhibits 57 for identification, 58 for identification, 59 for identification.)

(196) (Government's Exhibits 60, 61 and 62 marked for identification.)

Mr. Fennelly: I object to Exhibit 51 for identification, the check of Loretta Costello, as immaterial and irrelevant.

The Court: May I see it, Mr. Fennelly?

(Mr. Fennelly hands to the Court.)

The Court: 51 this is. Well, I can't tell now whether it is material or not. It is a check drawn by Loretta Costello.

Mr. Seymour: If your Honor please, I submit that, by itself, the Recordak facsimile is preliminary proof of payment. As for connection, if your Honor believes that it should be so limited, the Government will connect the check up later. But we submit that, as proof of payment by itself, the document is admissible.

The Court: Well, that would establish its competence. It would have nothing to do with relevance. I take it that is the point here.

Mr. Fennelly: My sole objection is to its relevancy and materiality.

The Court: I assume so, yes. However, I will receive it subject to connection. And I would like you to withhold presenting it to the jury until such time as you have laid some basis for it.

(197) Mr. Seymour: Very good.

The Court: So, I will receive it.

(Government's Exhibit 51 for identification received in evidence.)

Mr. Fennelly: No objection to 49, 50, 52.

(Marked Government's Exhibits 49, 50 and 52 for identification and received in evidence.)

The Court: Do you have many more checks like this, Mr. Seymour?

Mr. Seymour: I have the final group in my hand, your Honor.

The Court: I didn't hear you.

Mr. Seymour: I have the final group in my hand, your Honor.

The Court: Fine. I was going to suggest that you might have them marked and identified by the witness and I could let the jury go to lunch.

Mr. Seymour: Very good, your Honor.

The Court: Because Mr. Fennelly is going to need a little time to look at them. There is no sense in keeping the jury here, and with the rain maybe they might be delayed a little bit.

Suppose you take your lunch now, ladies and gentlemen. Remember the instruction I have given you, don't talk about the case among yourselves and certainly (198) not with anyone else, and keep your minds completely open untill all the evidence is in and until the case is submitted to you, if it is, with the Court's instructions.

The Clerk: 2.15?

The Court: We will try to make it 2.15, but with the rain there might be a little delay. Do the best you can to get back at 2.15.

I take it you raise no question about the identification being made in the absence of the jury?

Mr. Fennelly: None, your Honor.

The Court: The marking of these.

(Jury retires.)

The Court. Very well. You can go ahead and you can offer them, Mr. Seymour.

Mr. Seymour: There are certain additional exhibits for identification that need to be identified by the witness, your Honor, that are of the same character as have been offered.

May I proceed to have them identified, Mr. Fennelly, and consider the whole group? You have Exhibits 53 to 56 for identification.

Mr. Fennelly: Well, I would think you had better have the Clerk mark them.

The Clerk: Yes, they have been marked for (199) identification.

The Court: I thought you might stipulate that, that whatever was offered was from the bank and that they were records kept in the course of the business of the bank. But if you don't want to do that—

Mr. Fennelly: Yes, but I don't know what is going to happen. That is all I am interested in. What are you going to do?

The Court: It was my suggestion, so maybe I had better let both of you know what I thought you might be able to do. Have these various Recordaks marked and let the witness make the record that they are from the bank and that they were kept in the regular course of the bank's business; mark them for identification, and then when we come back they can be offered in evidence, but in the meantime you will have them and you will be looking at them to see what you want to do. It is simply a time-saving suggestion.

The Clerk: 53 to 62, inclusive, have not been received; they are marked for identification.

Q. Mr. Hitchcock, I hand you Government's Exhibits 57 through 62. Can you tell us, please, what they are? A. These are Recordak facsimiles of checks drawn against the account of Frank and Loretta B. Costello.

Q. Are the microfilm records from which those (200) facsimiles were made records kept in the regular course of business by the bank? A. They are.

Q. Is it the regular course of the bank's business to keep those records? A. It is.

Q. And are the original microfilm reels available for inspection upon direction of the Court? A. Yes.

Q. Tell us, please, Mr. Hitchcock, whether that identification of those checks applies equally to Government's Exhibits 53 for identification through 62 for identification, 53, 54, 55 and 56 having been before you a short while ago. A. Yes, sir.

Mr. Seymour: Now, if your Honor please, that takes care of all of the—

The Court: Have you offered those?

Mr. Seymour: —Recordak facsimiles. At this time—

The Court: I say, have you offered that last batch?

Mr. Seymour: No, your Honor. I am about to make my offer.

At this time the Government offers Exhibits 53 for identification through 62 for identification, with the exception of 57, 58, 59, 61 and 62.

(201) The Court: You are not offering them?

Mr. Seymour: Not at this time, your Honor.

The Court: Well, now, just let me know what is it you are offering.

Mr. Seymour: I will try to clarify the numbers, your Honor.

At this time the Government offers Government's Exhibit 53 for identification—if I may have your Honor's patience, may I withdraw the limited offer and make it a full offer at this time, all of the exhibits, 53 for identification through 62 for identification.

The Court: Very well.

Will you hand them now to Mr. Fennelly?

Mr. Seymour: Yes, sir, he has all of them.

Mr. Fennelly: I beg your pardon?

The Court: I say, you have all the exhibits that were offered now?

Mr. Fennelly: I don't know. Have I?

The Court: No. I say Mr. Seymour states that he has now offered to you all those that have been offered in this batch, namely, 53 to 61. If it turns out that he has not, I am sure he will make good on his offer. And while you are looking at them I hope you enjoy the weather and your lunch, because I am going to have mine.

(Recess until 2.15 p.m.)

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(202) AFTERNOON SESSION

(Jury present.)

HOWARD T. HITCHCOCK, resumed.

Mr. Seymour: May I proceed, your Honor?

The Court: Yes.

Mr. Seymour: Your Honor, at this time we still have pending the Government's offer into evidence of Government's Exhibits 53 for identification through 62 for identification.

Mr. Fennelly: I object to Exhibits 53 and 54 for identification on the ground that they are checks of Loretta Costello and are irrelevant and immaterial.

The Court: 53?

Mr. Fennelly: And 54.

Mr. Seymour: May I be heard on that?

The Court: Are not they partly Frank Costello's checks?

Mr. Fennelly: Not according to my notes. Let me—

The Court: You may be right and I may be wrong. I thought 53 was.

Mr. Fennelly: These are not in order, are they (indicating)?

Mr. Seymour: No, they are not.

(203) The Court: My notes are wrong, not yours.

Mr. Fennelly: Pardon me?

The Court: I say, it is my notes that are wrong, not yours, but the objection is overruled.

Mr. Fennelly: I object to Exhibits 56 and 57 on the same ground, checks of Loretta Costello.

The Court: Overruled.

Mr. Fennelly: Exhibits 58, 60, 61, 62, on the same ground, checks of Loretta Costello.

The Court: Overruled.

Mr. Seymour: Otherwise, Mr. Fennelly, have you any objections to the remaining of the exhibits?

Mr. Fennelly: No.

Mr. Seymour: May they all be admitted?

The Court: They will all be received.

(Marked Government's Exhibits 53 to 62, inclusive, in evidence.)

Direct Examination by Mr. Seymour:

Q. Mr. Hitchcock, do the records of your bank show the existence of any other accounts during the years 1937

through 1949 in which Frank Costello or Loretta B. Costello had any interest? A. They do.

Mr. Fennelly: Is he able to tell? I thought they were destroyed.

The Court: He says the records do show it.

(204) Mr. Seymour: Do they show existence, was my question, your Honor.

Mr. Fennelly: My question is, I would think it would be apparent they couldn't show it because he testified they were destroyed.

The Court: Very well. You may discuss that with the witness on cross examination.

Mr. Seymour: If your Honor please, may I submit that his testimony was that the ledger sheets have been destroyed prior to 1945.

Would you mark that, please?

(Marked Government's Exhibit 63 for identification.)

Mr. Seymour: Would you mark these also?

(Marked Government's Exhibit 64 for identification.)

(Marked Government's Exhibit 65 for identification.)

Q. Mr. Hitchcock, would you tell us what other account or accounts you found from the records in your bank during those years in which either Frank Costello or Loretta B. Costello had an interest? A. We located the account of the Estate of Jacob Geigerman.

Q. I hand you Government's Exhibit 63 for identification and ask you if you can tell us what that is. A. This

is the signature card relating to the (205) account of the Estate of Jacob H. Geigerman.

Q. Can you tell us in what name the signature appears thereon, the authorized signature? A. Loretta Geigerman Costello, Executrix.

Q. I hand you Government Exhibit 64 for identification and Government Exhibit 65 for identification and ask you if you can tell us what each of those exhibits is. A. This is the office file showing the opening and closing dates of the Estate of Jacob Geigerman.

Q. You are referring to Exhibit 64 for identification? A. 64.

Q. What is 65 for identification? A. That is letters of testamentary on the Estate of Jacob H. Geigerman, also known as Jacob Henry Geigerman, Loretta Geigerman Costello, Executrix.

Q. Are these three documents, marked Government's Exhibits 63, '4 and '5 for identification, records kept by the bank in the regular course of business? A. Yes.

Q. And is it the regular course of a bank's business to keep these records? A. It is.

Mr. Seymour: At this time, if the Court please, the Government respectfully offers in evidence Exhibits 63, 64 and 65 for identification.

Mr. Fennelly: I object to them as irrelevant (206) and immaterial—

Mr. Seymour: If your Honor please—

Mr. Fennelly: —as to Exhibit No. 4, also incompetent.

The Court: No. 4?

Mr. Fennelly: Exhibit 64.

(Exhibits handed to the Court.)

The Court: As to Exhibit 63 and 65, the objections are overruled. As to 64, it has been testified that this is a record of the bank, Mr. Fennelly.

Mr. Fennelly: Yes, I understand that.

The Court: What is the basis of your claim of incompetency?

Mr. Fennelly: It is not the course of the bank's business to keep a record such as that showing—such an official record as that is the Surrogate Court.

Mr. Seymour: If your Honor please, I submit that the witness has testified—

The Court: Just a minute.

It is the practice of your bank to keep records of the kind represented by Exhibit 64, is it not?

The Witness: Yes, sir.

The Court: And this card was kept in accordance with that practice?

The Witness: That is correct.

(207) The Court: Objection overruled.

Mr. Seymour: May they be received, your Honor?

The Court: Yes.

(Government's Exhibits 63, 64 and 65 for identification received in evidence.)

Mr. Seymour: If your Honor please, could we substitute photostats in lieu of these original records so they may be returned to the bank?

The Court: Yes, you may.

Mr. Seymour: Would you like to examine the photostats, Mr. Fennelly (handing)?

Mr. Fennelly: I wish they would not be substituted until I finish my examination, however.

Mr. Seymour: If your Honor please, we will hold the original documents in the court room for Mr. Fennelly.

Mr. Fennelly: You will waste a great deal of time, because I have to get the exhibit number to go back to the document, and if you leave them on until we finish the examination, I think that will save a lot of time.

Mr. Seymour: Well, with Mr. Fennelly's objection, I withdraw my request to substitute at this time.

The Court: Well, you have permission to substitute when Mr. Fennelly has examined.

Mr. Seymour: Very good.

(208) Q. Mr. Hitchcock, I hand you Government's Exhibit 64 in evidence and I ask you if you can tell the Court and jury when the account for the estate of Jacob Geigerman was opened and when it was closed. A. The account opened December 13, 1944, closed March 21, 1945.

Q. Now, Mr. Hitchcock, have you produced—

The Court: What is that date? March '45?

The Witness: March 21, 1945.

Q. Mr. Hitchcock, have you produced—

The Court: '47 or '45?

The Witness: 1945.

Mr. Seymour: May I proceed, your Honor?

The Court: Yes.

Q. Mr. Hitchcock, have you produced the ledger sheets relating to that account? A. No, sir.

Q. Can you tell us where they are, sir? A. They have been destroyed.

Q. Can you tell us, from your knowledge of the bank's practice, whether such ledger sheets would have been maintained for that account? A. Yes, they would.

Q. And would they have been kept in the regular course of business? A. Yes.

Q. And would it have been the regular course of (209) business to keep such records? A. Yes.

Q. Can you tell us whether the same practice with respect to where those ledger sheets are kept obtains as to ledger sheets kept for this account as pertained to the accounts of Frank Costello and Loretta B. Costello. A. It applies the same way.

Q. Now, Mr. Hitchcock, could you describe to us, please, any particular symbols which appear on any endorsements used in the regular course of business by your branch of the Corn Exchange Bank identifying endorsement as being made at your branch? A. Yes. We use the No. 2.

Q. Could you describe in a little more detail, Mr. Hitchcock, the nature of such endorsements and where the symbol "2" appears? A. The symbol "2" on the up-to-date stamp appears right after the date. It is either 0002 or 1102.

Q. Mr. Hitchcock, I hand you two income tax refund checks which have been admitted in evidence as Government's Exhibits 25 and 26, and I ask you if you will look on the reverse side of those checks and tell us whether the stamped endorsement appearing on both exhibits is the endorsement made by your branch of the Corn Exchange Bank. (210) A. Yes, sir, they are.

Q. And are those stamps used in the regular course of business? A. Yes, sir.

Q. And is it the regular course of business to place those stamps on checks passing through your branch? A. It is.

Q. Now, Mr. Hitchcock, are you familiar with the loan records maintained by the Corn Exchange Bank Trust Company? A. Yes.

Q. Have you made a search of those records? A. I have.

Q. For the period 1937 through 1949? A. Yes.

Q. And can you tell us, sir, whether you have located

any record of a loan to Frank Costello or Loretta B. Costello made during that period? A. There is no record of a loan or application for one being made.

The Court: When you say a loan, you mean a loan made by that bank?

Mr. Seymour: Yes, sir.

I have no further questions at this time.

Cross Examination by Mr. Fennelly:

Q. Mr. Hitchcock, from what did you prepare Government's Exhibit 48? A. From the deposit tickets.

(211) Q. From the deposit tickets? A. Yes, sir.

Mr. Fennelly: Now, may I come up here, your Honor?

The Court: Yes, surely.

Q. For the year—first of all, I understand that you have down here per year, first, a list of the deposits; right? A. That is correct.

Q. And a list of the cash items deposited? A. That is correct.

Q. As shown by the deposit tickets. And then the checks deposited shown by the deposit tickets? A. That is correct.

Q. Now, coming to the year 1948, would you just take that pad there, if you would— A. Surely.

Q. —and put down the amount of cash you have deposited according to this exhibit for 1948. $11,021. Right? A. Yes, sir.

Q. Now, then, would you put down the figure which you have as to the total checks deposited?

Now, what total have you got? A. $40,736.90.

Q. What total have you got down for the total deposits for that year?

The Court: You mean on the exhibit?

(212) Mr. Fennelly: On the exhibit.

A. $42,736.90.

Q. So you are 2,000 short, aren't you? A. Yes, sir.

Q. And can you explain the accuracy, or should I say inaccuracy of the exhibit? A. Sir, if I can take a look at those deposit tickets I can rectify it immediately.

Mr. Fennelly: May I have all the exhibits?

(A pause.)

A. I have found the error, Mr. Fennelly.

Q. What is the error? A. It is a check for $2,000 that is not listed. Total deposits will not be changed.

Q. So that you should add— A. 2,000.

Q. —to the checks deposited? A. That is correct.

Q. Would you do that on the exhibit?

Mr. Seymour: By all means.

Q. (Continuing) Would you? A. (Witness complies.)

Mr. Fennelly: Are these all in order (indicating)?

Mr. Seymour: I am not certain that they are.

Q. Mr. Hitchcock, did you appear before the Grand Jury to testify? A. No, sir.

Q. Now, between 1931 and 1933 you were having runs (213) on banks, were you not? A. Sir, that—

Q. Do you recall? A. Yes, sir, I have heard of it.

Q. And banks were closing? A. Yes, sir.

Q. And, as a matter of fact, you remember there came a time when the Government closed them all in around March, 1933; remember that? A. Yes, sir.

Q. Now, you have destroyed the ledger accounts of depositors for what years? A. The latest ledgers we have start in March, 1945.

Q. Beyond that you have destroyed them all? A. That is correct.

Q. And how far back do your loan records go? A. Well, I have checked them back to twenty years.

Q. You have them at least twenty years? A. Yes, sir.

Q. And have you them any longer? A. Yes, sir, there are records there longer than that.

Q. And signature cards? A. Yes, sir. Some of the signature cards go back as much as 25 years.

Q. Are they complete? A. Yes, sir.

Q. And those have not been destroyed? A. That is correct.

Mr. Fennelly: May I have the original signature card to open the account?

I wanted all of the records, please, that this (214) witness identified.

Mr. Seymour: You have the photostatic substitutes that were made part of that time. Here are the balance of the originals, of which you have photostats.

Mr. Fennelly: I need the originals.

Q. Exhibit 29, the signature card on the account of Frank Costello, that indicates that he was introduced to the bank by his wife, does it not? A. That is correct.

Mr. Fennelly: Are these all the original deposit tickets?

Mr. Seymour: Yes, sir, I believe they are.

Q. I show you Exhibit 41, which are the deposit tickets on the account of Frank Costello. Alongside, on the first one, April 15th, there is a number in pencil, is there not, 12? A. That is correct.

Q. That number is the number of the clearing house bank, is it not? A. That is correct.

Q. On the check which was deposited—that is the clearing house number of the bank— A. That is correct.

Q. —on the check deposited? Under that there is a No. 63-4. Is that the same thing? A. Yes. That indicates an out-of-town bank.

(215) The Court: And does 12 indicate a local bank?

The Witness: Yes, sir.

The Court: Very well.

Q. No. 72, which is on the second slip, what bank is that, do you know? A. That was the old Continental Bank.

Q. And on the slip for November 17th there is a pencil number 50, is it,—568? A. Yes, sir.

Mr. Seymour: Would you identify the year, please, Mr. Fennelly?

Mr. Fennelly: '47.

Q. What bank number is that? A. I couldn't say, sir, what bank it is, but I know it is outside of New York City.

Q. And on May 26, 1948, there are—I can't quite read them—looks like 15-5, treasury, abbreviated. A. That is too indistinct for me to make out.

Q. Doesn't that t-r-e-s indicate a Government check? A. It could.

Q. Doesn't it? A. I couldn't say specifically because I am not sure of it.

Q. And would you tell me what, on the slip for July 2,

1948, the figures 14-72 indicate? A. That I do not know either. Probably an out-of-town bank.

(216) Mr. Fennelly: Yes. I see on the bottom "Beverly Country Club, Inc."

Q. And on the slip for July 13, 1948, can you tell us what the pencil notation is on that? A. No, sir.

The Court: Keep your voice up a little, please.
The Witness: Surely.

Q. And some of these slips have no notation of a clearing house number of a bank, is that right? A. That is right, some. About the middle of 1948 on.

Q. Now, coming to Exhibit—

Mr. Fennelly: Is that all of the original of the Frank Costello account?

Mr. Seymour: Yes, plus the Recordak enlargements of statements which are with the substituted exhibit.

Q. Now, looking at Exhibit 40, which is the ledger account of Frank Costello, alongside the checks drawn, for instance, March 16, 1945, there are the letters "ex." Would you explain to the jury, please, what that means? A. The "ex" is used on postings for all checks that come through the clearing house to our branch.

(217) Q. And if the item does not have an "ex", it comes through to your bank in some other means? A. Yes, sir. It is processed right there in the branch.

Q. Now, there is no way of telling which of these checks on the statement are drawn to cash, except in the instances where you have a Recordak of the checks drawn; is that right? A. That is correct.

Q. And what I have asked you would be true equally of the account as to Mrs. Costello? A. Yes, sir.

Mr. Fennelly: Now, would you let me have those checks that you examined him about some endorsement.

Q. Now, you were asked some question about a number 2 appearing on an endorsement on Exhibit 26. And what did you say that was? A. Number 2.

Q. Well, what about it? I mean, that is what I am trying to find out. A. That is our branch number.

Q. Your branch number? A. That is correct, sir.

Q. And 145 is the endorsement on Exhibit 25? A. No, sir. Here is our number 2, right after the date.

Q. Your branch? A. That is right, sir.

Q. It bears the stamp, endorsement stamp of the Corn Exchange Bank? A. Yes.

(218) Q. With your number indicating the branch? A. That is correct.

Q. And I take it you have no deposit tickets beyond the dates that you brought here? A. No, sir.

Q. And would you let me have the date of that deposit slip of $2,000 in 1948 that I asked you about? Did you happen to notice which one it was? A. Well, I can pick it right out for you.

Q. (Hands to witness.) A. This is the wrong batch of deposit tickets.

Q. The wrong batch.

The Court: Why don't you bring up all you have.

Mr. Delaney: Exhibit 46.

Mr. Fennelly: 46.

Q. Here it is (handing to witness). A. (Witness hands to Mr. Fennelly.)

Q. That is the ticket of July 9, 1948? A. That is correct.

Mr. Seymour: May the record indicate that Mr. Fennelly is referring to Exhibit 46.

Mr. Fennelly: Exhibit 46. It was indicated. That is all.

The Court: I take it you have now finished with the originals, and the substitutions may now be made?

(219) Mr. Fennelly: Yes, your Honor.

The Court: Very well.

Mr. Seymour: May I ask one question, your Honor?

The Court: Yes, sure.

Redirect Examination by Mr. Seymour:

Q. Mr. Hitchcock, I believe you said before, in connection with the facsimile reproductions of the bank statements, that that system went into effect on March 2, 1949? A. Yes, sir.

Q. Could you tell us, please, when the Recordak system with respect to checks went into effect? A. The same day.

Mr. Seymour: Thank you. I have no further questions.

The Court: Very well. You may step down. Thank you.

(Witness excused.)

Mr. Seymour: The Government calls Mrs. Ann Roberts.

Ann Roberts—for Government—Direct

ANN ROBERTS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The Court: Now, Mrs. Roberts, I am quite (220) sure you are not used to doing this, but—

The Witness: This is the first time, your Honor.

The Court: —you try, please, to speak loudly enough so that the last gentleman in the jury box will hear you, and then that will help all of us, because that gentleman over there has to hear and the gentleman at the last table.

The Witness: All right.

The Court: All right.

Direct Examination by Mr. Seymour:

Q. Mrs. Roberts, where do you live? A. At 1055 University Avenue, Bronx 52.

Q. What is your occupation? A. Right now I am a housewife.

Q. Were you ever employed by the Corn Exchange Bank Trust Company? A. Yes, sir, I was; a period of about, almost, 25 years I worked for them.

Q. Did you ever work at the Hudson River branch of that bank? A. Yes, sir, about 15 years I was with the Hudson River branch.

Q. Are you familiar with the books and records kept by the bank? A. Yes, I am.

Q. Now, Mrs. Roberts, during the course of your employment by the bank did you ever have occasion to (221) prepare any transcripts of accounts? A. Yes, sir, I have.

Mr. Seymour: Would you mark these for identification, please.

(Marked Government's Exhibits 66, 67 and 68 for identification.)

Q. Now, Mrs. Roberts, I hand you Government's Exhibit 66 for identification. Would you tell us, please, what that is? A. It is a transcript of the account of Loretta B. Costello that I made up.

Q. Would you speak up, please? A. It is a transcript of the account of Loretta B. Costello that I made up at the Corn Exchange Bank, Hudson River Branch.

Q. Would you tell us what period that transcript relates to? A. Well, it started with March 1943 and it went to March 1945.

Q. Is the transcript in your handwriting? A. That is right, it is my handwriting.

Q. I hand you Government's Exhibit 67 for identification. Would you tell us what that is, please? A. It is a transcript of the account of Frank Costello made at the Corn Exchange Bank, Hudson River Branch, and it started in February 1944 and went to March 1945, and it is in my handwriting; I made up (222) this transcript also.

Q. I hand you Government's Exhibit 68 for identification, and would you tell us what that is, please? A. The account of the Estate of Jacob H. Geigerman, made at the Corn Exchange Bank, Hudson River Branch, and it started in December 1944 and went to March 1945. I also made up this transcript; it is all in my handwriting.

Q. Mrs. Roberts, at the bottom of Government's Exhibit 68 for identification there is one word in pencil circled. Is that in your handwriting? A. No.

Q. Was it there at the time you prepared it? A. No.

Q. Can you tell us, please, Mrs. Roberts, from what books and records of the bank these three exhibits, 66, 67 and 68 for identification were prepared? A. They were made from the ledger sheets in the Corn Exchange Bank, copies.

Q. The ledger sheets for the particular account? A. That is right.

Q. And were those ledger sheets records which were kept in the regular course of business? A. That is right.

Q. And was it the regular course of business to (223) keep those records? A. That is right.

Q. With respect to all three exhibits, 66, 67 and 68, would you tell us, please, generally, what appears in the respective columns? A. Well, on the lefthand—

Mr. Fennelly: I object to it until they are in evidence.

The Court: Pardon?

Mr. Fennelly: I object to it, your Honor, until they are in evidence.

The Court: Oh, I think she may describe what they show. All right.

Q. In general terms. A. Well, on the lefthand side of the sheet there would be, like, checks drawn against the account. On the righthand side deposits credited to the account, and there would be a balance at the end of each month to show the balance at the close of business at the end of the month. In other words, the checks would be withdrawals, maybe you would call them withdrawals, debits, checks charged against the account.

Q. Thank you, Mrs. Roberts.

Mr. Seymour: At this time, if your Honor please, the Government offers in evidence Government's Exhibits 66 for identification, 67 for identification and 68 for (224) identification, asking leave, however, with respect to 68 to substitute at this time a photostat with the word at the bottom of the page, which the witness says is not in her handwriting, blocked out, and asking leave at the end of counsel's cross

examination to substitute photostats for the two Exhibits 66 and 67 for identification.

Mr. Fennelly: May I examine the witness preliminarily?

Preliminary Cross Examination by Mr. Fennelly:

Q. It was not the regular custom of the Corn Exchange Bank in the usual course of business to make handwritten transcripts of accounts, was it? A. I make transcripts only when I get orders from the office, somebody in the office. Otherwise, I wouldn't make them up.

Mr. MacMahon: It is immaterial.

Q. Would you—I am not sure whether all the jurors can hear or not. A. I said I would only make a transcript up on orders from someone in the office of the Corn Exchange. I would never make up one on my own say—

Q. I mean, in the usual course of business at the Corn Exchange Bank, they didn't make up handwritten transcripts, did they? A. Well, lots of times people (225) would request a statement and request a transcript; a duplicate copy of the statement. That is what those transcripts are.

Q. If someone requested it, you would send it out to them? A. No, sometimes they would be picked up at the bank.

Q. But the customer, if you made it for that purpose, would get the transcript? A. That is according to how an order came in. If the office—

Q. So if a customer asked for it and you either sent it to them or they came in and got it, the customer got the transcript? A. That is right, if the customer so asked for it, that is right.

Q. These transcripts that you say you prepared, they don't completely reflect everything that was on the bank

statement, do they? A. That is right, they would be a duplicate copy of what was on the ledger sheets in the bank. Now, for example, on the—

Mr. Fennelly: What exhibit number is this? That is the statement of Loretta B. Costello.

Mr. MacMahon: 43.

Q. I show you Government's Exhibit 43, the statement of your bank ledger sheet for Loretta B. Costello. You will notice that opposite the deposits they have "ex" (226) on some of them. A. These are not the—

Mr. Fennelly: I withdraw the question.

Q. You will notice that on checks drawn out of the bank, you will see the letters "ex", is that right? A. That is right.

Q. That appeared on all the bank statements? A. "ex" means an exchange, came in from some other bank.

Q. Does that appear on any of these three Exhibits 66, 67 and 68 that you prepared? A. No, you don't put "ex"; just the amount, the amount of the check that is drawn. You don't bother putting "ex" when you are making up a transcript. Just put the amounts of the checks, that is all. And "ex" would mean a check coming from another bank.

Q. That is right, but it doesn't appear on the exhibits that you prepared? A. No, you don't put them on transcripts.

Mr. Fennelly: I object to them as incompetent, your Honor.

The Court: Madam, were there other times during the many years that you were with the bank when officials, your superiors, asked you to make tran-

scripts similar to those which you have just told us about here?

The Witness: Yes, many times, make up transcripts.

(227) The Court: For other customers?

The Wtiness: For other accounts.

The Court: When you did that, you examined the ledgers of the bank, did you, and took off—

The Witness: You always take a transcript.

The Court: (Continuing) —the information so as to carry out the instructions?

The Witness: That is right.

The Court: I suppose you had some method of checking to make sure you were accurate?

The Witness: That is right. You can always check these on an adding machine.

The Court: When you made the transcript we are talking about now, did you follow that regular practice of yours?

The Witness: Yes, you would always start with the last—

The Court: And all those figures you took off were taken off the bank's regular ledgers?

The Witness: That is right.

The Court: Those were books and ledgers kept in the regular course of the bank's business?

The Witness: That is right.

The Court: And it was a regular course of the bank's business to keep such records?

(227-A) The Witness: Yes.

The Court: The objection is overruled.

(Government's Exhibits 66 to 68, inclusive, for identification received in evidence.)

The Court: We will take our recess.

(Short recess.)

(228) Mr. Seymour: I have no further questions of this witness, your Honor.

Mr. Fennelly: No further questions.

The Court: Thank you. You may step down.

(Witness excused.)

Mr. Seymour: The Government calls Ernest D. Willets.

Ernest D. Willets, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Willets, where do you live? A. In Manhasset, Long Island.

Q. What is your address, sir? A. 68 Webster Avenue.

Q. What is your occupation? A. At the present time retired.

Q. Prior to your retirement, by whom were you employed? A. Corn Exchange Bank Trust Company.

Q. Were you ever employed at the Department of Records of the Corn Exchange Bank? A. I was.

Q. During what period of time? A. Oh, '38 up to '51. I don't remember exactly.

Q. Mr. Willets, during the course of your employment at the Department of Records for the Corn Exchange

(229) Bank Trust Company, did you ever prepare hand written transcripts? A. I have.

Q. And from what records would you prepare such transcripts? A. From the bank's ledgers.

Q. Were the bank's ledgers maintained in that office? A. It was.

Mr. Seymour: Would you mark this for identification?

(Marked Government's Exhibit 69 for identification.)

Mr. Seymour: Would you also mark this one?

(Marked Government's Exhibit 70 for identification.)

Q. Now, Mr. Willets, I hand you Government's Exhibit 69 for identification. Would you tell us, please, what that is? A. This is a transcript of an account.

Q. An account of what name? A. Loretta B. Costello.

Q. Is the branch in which the account was maintained indicated? A. Hudson River Branch.

Q. Can you tell us in whose handwriting that transcript is? A. It is in my handwriting.

Q. Can you tell us for what period the transcript relates? A. From March 7, 1937, up to March 30, 1940.

Q. Would you look at that original date again, sir? A. September 7, 1937, through March 30, 1940.

Q. I hand you Government's Exhibit 70 for identification. Would you tell us what that is, please? (230) A. This is also a transcript of the account of Loretta B. Costello at the Hudson River Branch.

Q. And in whose handwriting is the transcript? A. That is also in my handwriting.

Ernest D. Willets—for Government—Direct

Q. Would you tell us what period the transcript covers? A. From December 31, 1938, up to March 19, 1943.

Q. Would you tell us, generally, Mr. Willets, what appears in the respective columns on those two exhibits? A. On the left-hand column are the debts, and on the right-hand are the credits, otherwise known as withdrawals and deposits.

Q. Do any monthly balances appear thereon? A. Not on this one.

Q. Is it possible to compute the balance as of any date from those papers? A. Yes.

Q. Will you tell us, please, how one would go about making such a computation? A. Well, take the month of January, 1939, on the credit side with the previous balance, add up those figures, and add up the figures on the debit side, and you subtract one from the other and you would get the balance as of the end of January or the beginning of February.

Q. Could you make such a computation for any month? A. No, they are all right straight through to the (231) very end.

The Court: Pardon me just a minute. Let me see 70.

(Exhibit handed to the Court.)

Q. Along the lines you have just indicated, Mr. Willets, is it possible from these two exhibits to determine the balance in those accounts as of any date inclusive— A. It can be done.

Q. —of the dates that appear? A. It can be done, yes, sir.

Q. Did you prepare many transcripts when you were employed by the bank? A. Yes.

Q. Did you do it in the regular course of your employment? A. I did.

Q. From what did you prepare the transcripts? A. I beg your pardon?

The Court: From what did you prepare the transcripts?

The Witness: I don't just quite get this.

The Court: From what documents did you get whatever figures appear on the transcript columns?

The Witness: The bank ledger sheets.

The Court: The bank ledgers?

The Witness: Yes, sir.

(232) Q. Were the bank ledgers books kept in the regular course of business? A. Yes.

Q. Was it the regular course of the bank's business to keep those ledgers? A. That is true.

Mr. Seymour: At this time the Government respectfully offers Government's Exhibit 69 and Exhibit 70 for identification in evidence.

By Mr. Fennelly:

Q. Mr. Willets, did you appear before the Grand Jury—

Mr. Seymour: If your Honor please, I submit—

Q. (Continuing) —which returned the indictment in this case and testify?

Mr. Seymour: I submit the question is improper at this time. As I understand it, we are considering the admissibility of certain documents.

The Court: Sustained. If you desire to examine

the witness preliminarily on the question of admissibility, you may, and on cross examination you may ask that question, if it is proper, and I will rule on any objections which are made at that time.

Preliminary Cross Examination by Mr. Fennelly:

Q. Mr. Willets, when did you prepare Exhibit 69 for identification? A. I don't remember the exact date. Sometime prior to—

(233) Q. What year was it? A. I don't remember the year.

Q. How recently was it? A. It must have been sometime prior to '51, May of '51.

The Court: Is that the time when you retired?

The Witness: That is when I had retired, yes, sir.

Q. Do you recall how long prior? A. Oh, probably three or four years.

Q. And who asked you to prepare this? A. The branch at Hudson River—Hudson River Branch called the Department of records and for the transcript.

Q. In the usual course of business when transcripts were made up, weren't they either typed or mimeographed? A. Not with us, they weren't.

Q. Pardon? A. Not with us.

Q. You mean not in the Record Department? A. No.

Q. But wasn't that the practice in the bank itself? A. The bank had the machine ledgers, but we made them up from the machine ledgers in pen and ink.

Q. Yes, but when the bank itself, in the regular course of business, wanted to send out a transcript of the account, didn't they have it mimeographed? A. I don't know.

Q. Pardon? A. I don't recall whether they did or not.

(234) Mr. Fennelly I object to them as irrelevant and immaterial and also incompetent, and point out to your Honor that they are a duplication insofar as Exhibit 70 for identification contains the same material as Exhibit 69 for identification from January '39 through March 30, 1940.

Mr. Seymour: May I speak with respect to the duplication, your Honor?

(234) Mr. Fennelly: I object to them as irrelevant

The Court: I don't hear you.

Mr. Seymour: May I speak with respect to the question of the duplication?

The Court: Wait a minute. Have you finished?

Mr. Fennelly: Yes.

The Court: Go ahead.

Mr. Seyomur: Your Honor, I submi that both from the face of these documents and from the witness's testimony it is necessary to have that duplication, which, in fact, does exist as far as dates covered are concerned, in order to make the computation starting from the initial balance to arrive at any subsequent balance within the period.

And I would further submit the duplication can in no way be harmful to the defendant.

Mr. Fennelly: That, obviously, is not so. You can strike a balance from either one from any period (235) you want by adding up the figures and subtracting one from the other.

The Court: Yes, I think that is so, but they are done in this way, and I don't think the duplication—it certainly is not going to prejudice the defendant in any way, but as regards their relevance and materiality, I overrule the objection.

Mr. Seymour: May they be received, your Honor?

The Court: Yes.

(Marked Government's Exhibits 69 and 70 in evidence.)

Mr. Seymour: May we substitute photostats at the close of Mr. Fennelly's cross examination of this witness?

The Court: Yes.

(236) Mr. Seymour: Your witness.

Cross Examination by Mr. Fennelly:

Q. Did you appear before the grand jury that returned the indictment in this case? A. No, sir.

Mr. Fennelly: May I come here to question him, your Honor?

The Court: Oh, yes, surely.

Q. Now, the column on the lefthand side beyond the date, what does that represent? A. The withdrawals.

Q. Now, I notice that every once in a while there are some pencil figures. Those figures do not represent an individual withdrawal, does it? A. It does not.

Q. That is someone's calculation? A. Just adding it, the total of that group of figures.

The Court: Mr. Witness, will you try to keep your voice up a little bit? And, then, one thing more, please don't answer by merely shaking your head because the reporter has to take it. So if you are indicating a yes or no, say so, and that will help.

The Witness: Pardon me.

The Court: And a little louder.

The Witness: Right.

Q. Is that your calculation or someone else's? A. That probably is mine.

(237) Q. Are you sure? Is it your handwriting? A. Yes.

Q. Pardon? A. Yes.

Q. Now, did you copy that from the original bank record? A. Yes.

Q. That was on the original bank record? A. Not the pencil figures, but the ink figures.

Q. No, sir, I am only speaking about the pencil figures. A. They were not on the bank's record.

Q. And is the same true of the penciled figures on the credit side? A. Right, yes.

Q. And the pencil figures on the credit side do not represent individual deposits, is that right? A. That is right.

Q. Now, I call your attention to an item on this, March 22, one hundred and twenty five one.

Mr. Seymour: In what year, sir?

Mr. Fennelly: Of 1940.

Mr. Seymour: Thank you.

A. One hundred and twenty five?

Q. One. What does that mean? A. That is $125. That is not a one.

Q. It is not a one? A. No, that is just the stroke of the top of the five.

Q. Part of the five? A. That is right.

(238) Q. It is over in the cents column; right? A. I know.

Q. Now, on Exhibit 69, down after May 11, 1938, I noticed some words, "checks posted on top of each other." What does that mean? A. Well, sometimes it sticks and one is posted on top of each other, that is, the machine.

Q. You mean this is your description of the original bank records? A. I put it in to explain what that is.

Q. I mean, those words were not on the original records of the bank, were they? A. No, sir.

Q. That is your description of what you saw about the numerals on the bank records, is that right? A. Right, yes.

Q. Now, what is the figure— A. 2295.

Q. And did you first have something else written there, under the original 2? Is it a 2 or a 3? A. It might have been a 3 and I thought it was a 2.

Q. Well, is it a 3 now or is it a 2? A. It is a 2 now.

Q. And is that the way it appeared on the original bank records? A. Gee, I don't remember now, it is too long—

(239) Q. Was it a 3 or a 2 on the original bank records? A. I probably took it for a 3 and I found it was a 2.

Q. Now, after February 7, 1939 I see the word "omit" and then some figures stricken out. A. That was put in by error.

Q. That is an error that you struck out when you found it, is that it? A. That is true.

The Court: You mean an error in transcription?
The Witness: An error in putting it on the sheet.
The Court: Yes.

Q. Now, do you know whether or not these records have come immediately from the Corn Exchange Bank, I mean presently? Pardon me? A. I don't know at the present time whether they do or not.

Q. Do you know where they came from—

Mr. Seymour: Your Honor—

Q. —immediately?

Mr. Seymour: I object to this as being irrelevant.
The Court: Sustained.

Mr. Fennelly: I move, your Honor, to strike out all of the pencil notations which are calculations of the witness.

(240) Mr. Seymour: May I inquire of the witness further as to those pencil notations, your Honor?

The Court: Yes.

Redirect Examination by Mr. Seymour:

Q. Mr. Willets, I believe you just said that these pencil notations were made by you; is that right? A. That is correct.

Q. Would you tell us the purpose for making those notations? A. Well, whenever I got to the bottom of the ledger sheet or the statement sheets which I made up I would prove it to see that I hadn't left out any items, then I came forward on the next sheet and go on.

Q. Was that to double check your entries, to make sure the transcript was accurate? A. Right.

Q. Mr. Willets, with respect to Exhibit 69, counsel for the defendant has just asked you concerning an entry under date of May 11, 1938 alongside which was the notation "Checks posted on top of each other." A. Yes.

Q. And you said that you were not certain whether it was a 2295 or a 3295, is that correct? A. That is correct.

Q. Now, I notice, Mr. Willets, on that same page at the very top of the column some figures in pencil. A. Yes.

(241) Q. Are those part of these running balances, proving balances that you refer to? A. They are carried forward from the previous sheet.

Q. I notice immediately under that entry, as to which Mr. Fennelly questioned you, some pencil notations. A. Oh, yes.

Q. Will you tell us whether that is the same type of an entry? A. I did that to prove, to find out the correct amount of that check which was drawn.

Q. Now, if we were to add up all of the figures between the pencil notation at the top of the column and that notation immediately under the questioned figure 2295 or 3295, we could determine, could we not, whether it was in fact 2295 or 3295? A. You could, yes.

Mr. Seymour: If your Honor please, I submit the pencil notations are of considerable significance in establishing the accuracy of these exhibits and, therefore, should not be stricken.

Mr. Fennelly: It is supposed to be a transcript of a record, your Honor, and that is not what appeared on the original record.

The Court: The motion to strike is denied. You may argue that as to weight if the time arrives (242) to do so.

Mr. Fennelly: And may I ask one more question of the witness?

The Court: Oh, yes.

Recross Examination by Mr. Fennelly:

Q. Didn't the original bank records show a daily balance? A. Yes.

Q. And you did not transcribe that, did you? A. No.

Q. Nor did you put down the balance at the end of the month as shown by the books of the bank? A. I did not.

Mr. Fennelly: I renew my objection, your Honor.

The Court: Overruled.

Mr. Seymour: I have no further questions of this witness.

The Court: Have you any further questions, Mr. Fennelly?

Mr. Fennelly: No.

The Court: You may step down.

The Witness: Do you need me any more?
The Court: No.
The Witness: And I can go home?
The Court: I guess you can go home.
The Witness: Thank you, sir.

(Witness excused.)

(242-A) Mr. Seymour: The Government calls Miss Marjorie A. Carmichael.

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(243) MARJORIE A. CARMICHAEL, called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Miss Carmichael, would you keep your voice up, please— A. Yes, sir.

Q. —as we go along. Where do you live? A. I live in Port Washington, New York.

Q. What is the address? A. 34 Hillview Avenue.

Q. What is your occupation? A. Banking.

Q. By whom are you employed? A. I am employed by the Meadowbrook National Bank, Port Washington office.

Q. Has that office always been known as the Meadowbrook? A. No, sir.

Q. What were its prior names? A. Port Washington-Manhasset National Bank.

Q. And prior to that? A. Port Washington National Bank and Trust Company.

Q. How long have you been employed by the bank? A. Twenty-three years.

Marjorie A. Carmichael—for Government—Direct

Q. Are you familiar with the books and records of the bank? A. Yes, sir.

Q. Are you also employed by the Safe Deposit Company connected with the bank? A. Yes, sir.

(244) Q. Are you familiar with the books and records of the Safe Deposit Company? A. Yes, sir.

Q. Can you tell us, please, Miss Carmichael, whether the books and records of the Meadowbrook National Bank show any account for Frank or Loretta Costello during the years 1937 through 1949? A. Yes, sir.

Q. Have you produced any records here today relating to that account? A. Yes, sir.

Q. Would you tell us in whose name the account was maintained? A. The checking account was maintained in the name of Loretta B. Costello.

Q. May I have the records you have produced? A. (Handing papers to Mr. Seymour.)

Mr. Seymour: Would you mark this for identification?

(Marked Government's Exhibit 71 for identification.)

Mr. Seymour: Mark these as one exhibit.

(Marked Government's Exhibit 72 for identification.)

Mr. Seymour: And this.

(Marked Government's Exhibit 73 for identification.)

Q. Miss Carmichael, I hand you Government's Exhibit 71 for identification. Would you tell us what it is, please?

A. That is the personal signature card of Miss Loretta B. Costello.

Q. I show you Government's Exhibit 72 for (245) identification. Could you tell us what that is, please? A. Those are a transcript of the statement sheets from the beginning of the account until the account subsided.

The Court: Until the account what?

The Witness: Until the end of the account.

The Court: When was that?

The Witness: Activity was ceased in—this shows September 14, '50.

Q. Do the records include the period from the opening of the account through the end of 1949? A. That is correct, with one exception, and I believe it is the month of August, 1945, which was not able to be located.

Q. Miss Carmichael, I hand you Government Exhibit 73 for identification. Can you tell me what those papers are? A. These are deposit tickets made out by Loretta B. Costello for the credit to her account.

Q. During what period? A. From August '48 through August '49, and I believe these were the only ones that could be found because the others had been burned.

Q. Miss Carmichael, I notice in Government's Exhibit 72 for identification all but the last sheet appear to be photographic prints. Can you tell us (246) whether these prints are made from microfilm? A. They are.

Q. Are these Recordak enlargements of microfilm reels? A. Yes, sir.

Q. Can you tell us, please, if the microfilm pictures themselves are records made in the regular course of business? A. Yes, sir.

Q. And is it the regular course of your banking business to take such microfilm pictures? A. Yes, sir.

Q. Are the reels themselves from which these enlarge-

ments were taken, are they available for inspection upon direction of the Court? A. Yes, sir.

Q. With respect to Government's Exhibits 71 and 73 for identification, are those records kept in the regular course of your bank's business? A. Yes, sir.

Q. And is it the regular course of your banking business to keep those records? A. That is correct.

Mr. Seymour: At this time, if your Honor please, the Government offers in evidence Exhibits 71, 72 and 73 for identification.

The Court: I think it might take you some time to go through those. Do you, Mr. Fennelly?

Mr. Fennelly: I can't tell until I run through (247) them.

The Court: What I am thinking of is whether to hold the jury here.

Mr. Fennelly: Yes, I would think you could let them go.

The Court: I think it would take you some time to go through them.

The jury may leave now.

(To the jury) Remember the instruction I have been giving you: Don't talk about the case among yourselves or with anybody else, keep your minds completely open until all the evidence is in and the case is submitted to you, if it is, under the Court's instructions.

Ten-thirty tomorrow morning.

(Jury retires.)

The Court: It just occurred to me, Mr. Fennelly, in connection with that request that you made this morning, about the marking for identification of the Grand Jury minutes, which the Court examined yesterday, that they haven't been marked.

Will you arrange to have them here tomorrow morning? and we will do that first order of business.

Mr. MacMahon: I will have them here, but I don't know whether it is proper to mark them for identification.

(248) The Court: I am sure it is.

Mr. MacMahon: I object to them being here.

The Court: I am sure it is proper to mark them, but the way we mark them is to seal them and mark them so they aren't available to anybody but the Court here and any reviewing court, if there be one. That is the way they will be marked.

Ten-thirty tomorrow morning, and let us do that in the morning so there will be no question about it.

Very well.

(Adjourned to Friday, April 9, 1954, at 10.30 a.m.)

Colloquy

(249) New York, April 9, 1954;
10:30 o'clock, a.m.

Trial resumed.

(Jury not present.)

The Clerk: If there are any witnesses present in the courtroom at this time they will please retire to the jury room.

(Jury in box.)

The Court: Good morning, ladies and gentlemen. Now, for the convenience of the jury and counsel, I have an announcement to make about our schedule next week.

On Monday we won't have any session ~~in the~~ morning; I have to attend the funeral of a dear friend of mine who is being buried on that morning. So we will start at one o'clock, if that is convenient to everybody, on Monday and go through the afternoon.

The Court will not sit on Thursday or Friday of next week. So when we recess on Wednesday afternoon we will have no further sessions next week. We will reconvene on the 19th.

(250) Mr. Seymour: May we proceed, your Honor?

The Court: Yes.

Mr. Seymour: As the first order of business, before the witness returns to the stand, we have produced this morning the grand jury minutes in connection with the obtaining of the indictment in this case—

The Court: I see they are sealed.

Mr. Seymour: —pursuant to your Honor's—

The Court: I suggest that you open them and hand them to me unsealed. The rule, as I complied with it when I was where you are and which I understand to be the rule in these cases, is that the judge seals them. And I should like to see them and make sure, so that the record will be clear, that the minutes now are in the same condition as they were when I examined them. And that of course is no suggestion that the district attorney has modified them in any way. But we will comply strictly with the rule.

Mr. Seymour: Very good, your Honor.

The Court: Now, Mr. Clerk, if you will hand me an envelope we will seal them right now and mark them.

The Clerk: This is rather embarrassing—I don't have one. I can get one later.

(251) The Court: Very well.

The Clerk: I will get one later on.

The Court: Very well.

Mr. Seymour: Would your Honor care to assign a number for identification at this time?

The Court: I will as soon as I get the envelope.

MARJORIE A. CARMICHAEL resumed.

Mr. Seymour: If your Honor please, there is pending an offer of Government's Exhibits 71, 72 and 73 for identification.

In connection with the offer of 72 for identification late last evening, at the end of the court, I overlooked one question to the witness in connection with the competency of part of that exhibit, and I ask the Court's leave at this time to ask a further question.

The Court: Yes.

Marjorie A. Carmichael—for Government—Direct.

Direct Examination by Mr. Seymour (Continued):

Q. Miss Carmichael, I hand you Government's Exhibit 72 for identification. Part of that exhibit, the last page, appears to be an original document which I believe you said yesterday was a ledger sheet, is that correct? A. That is correct.

(252) Q. Now, on that sheet there appear to be some pencil notations in addition to entries made apparently by machine, is that correct? A. That is correct.

Q. Could you tell us, please, whether those notations are notations that were placed on that sheet at the time it was originally made up? A. No, sir.

Q. Would you tell us, then, please, which part of that exhibit constitutes the regular business entries? A. It would be only the machine markings.

Q. And as so limited, that sheet, along with the balance of the exhibit, is a record kept in the regular course of business? A. That is correct.

Q. And it is the regular course of business to keep that sheet as well as the other portions of that exhibit? A. That is right.

The Court: I take it you are only offering so much of the paper as contains the machine figures and not any notations, is that right?

Mr. Seymour: Yes, your Honor. And I ask leave at the appropriate time to substitute a photostat with the pencil notations blocked out.

The Court: All right, you may do so.

Mr. Fennelly: I object to them as irrelevant and immaterial, being the account of Mrs. Costello, not (253) the defendant's.

The Court: Overruled.

Mr. Seymour: May they be received at this time?

The Court: Yes, I say the objection is overruled. They may be marked in evidence.

(Marked Government's Exhibits 71, 72 and 73 in evidence.)

Q. Miss Carmichael, I hand you Government's Exhibits 71, 72 and 73. First, with respect to Exhibit 71, can you tell us when the account of Loretta B. Costello was opened in your bank? A. The signature card date reads August 28, '44.

Q. Can you tell us what address is given by the depositor in connection with that account? A. 5 Barkers Point Road, Port Washington.

Q. Going on to Government's Exhibit 72, Miss Carmichael, can you tell us the balances on deposit as of the end of the following years, that is, December 31 of the years 1944, '45, '46, '47, '48 and '49? A. December 30, '44, $698.29. December 31, '45, $1,043.40.

The records don't show an actual December 31 or 30 of '46, but the carry-over balance from November 30, 1946 shows $772.83 and the next balance showing is (254) January 16, '47, so I would assume that the balance of November 30, '46 would be the balance as of December 30 or 31 of that year, '46, in the amount of $772.83.

Q. Miss Carmichael, you said you would make that assumption. Isn't it a fact from the records that that is the balance? A. Yes. There has been no activity in between those, November statement carry-over into the through the month of January, so it is the balance as of December '46, and of December '46, $772.83.

There is a carry-over balance as of November 28, '47 of $149.44. No statement was made up at the end of December of '47. So the balance again would read December 30 or 31 of '47 in the amount of $149.44.

Reading from the ledger sheet, the last balance in '48 was October 11, $613.39.

The balance as of December 30, or 31 of '48 would be $613.89 because the next posting is April 11, '49.

The record shows that on October 7, '49—a balance of $327—$324.88. No posting between October and March 10 of '50. So the balance as of December 30 or 31, '49 would be $324.88.

Q. Thank you. Would you look at Government's (255) Exhibit 73, please? I believe you said yesterday that those were all the deposit tickets you could find up to the end of 1949 on that account, is that correct? A. That is correct.

Q. Would you tell us, please, what years those deposit tickets relate to? A. I beg your pardon?

Q. What year do those deposit tickets relate to, the ones you have in your hand? A. These are '48 and '49.

Q. Would you tell us, please, the total deposits reflected on those deposit tickets in 1948? A. $600.

Q. Can you tell us the form in which those deposits were made? A. According to the markings on the deposit tickets, they would be considered cash.

Q. What do you mean by "be considered cash"? A. Is cash. The markings on the deposit ticket prove that it was cash received.

Q. Would you look at the deposit tickets relating to 1949 and tell us, please, what the total deposits were in that year as shown on the tickets? A. $500.

Q. And what portion of that amount was made by cash, if any? A. Well, there is one deposit—one portion of it marked was cash and then a circle around $100 opposite the markings of checks. It is rather (256) difficult for me to state whether that was all cash or whether there was a reason for that circle marked around the hundred dollars opposite the word "check".

Q. Will you explain yourself further? What does that deposit ticket show? A. It shows, from my interpretation of it, that there would be $100—

Mr. Fenhelly: I object. The notation speaks for itself.

The Court: Yes. Just tell us what it shows.

The Witness: It would indicate, from my reading, that it would be $100 cash and $100 check.

Q. A total deposit of $200? A. That is correct.

Q. Is there another deposit ticket relating to 1949 in that group? A. No, sir.

Q. Only one deposit ticket? A. Two deposit tickets.

Q. What is shown on the other one? A. The other one has $300 in cash.

Q. Making, between the two, a total of $500 on deposit, $400 in cash? A. That is correct.

Mr. Seymour: Would you mark these for identification?

(Marked Government's Exhibits 74 and 75 for identification, respectively.)

Mr. Seymour: Would you also mark this group (257) as one exhibit.

(Marked Government's Exhibit 76 for identification.)

Q. Miss Carmichael, I hand you Government's Exhibits 74, 75 and 76 for identification, and if you can, tell us, please, if you would, what those are? A. These are checks drawn by the maker Loretta B. Costello.

Q. Now, are those facsimiles from microfilm kept by the bank? A. Yes, sir.

Q. And are the microfilm reels from which those facsimiles are taken records kept by the bank in the regular course of business? A. Yes, sir.

Q. And is it the regular course of the bank's business to keep such records? A. Yes, sir.

Q. And are the reels themselves available for inspection upon direction of the Court? A. Yes, sir.

Mr. Seymour: At this time, if the Court please, the Government respectfully offers Government's Exhibits 74 and 75 for identification in evidence.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled. They will be received.

(Government's Exhibits 74 and 75 for identification received in evidence.)

Q. Now, Miss Carmichael, I believe you said yesterday (258) that you were also employed by the Safe Deposit Company. What is the formal name for the company? A. It is the Port Washington Safe Deposit & Storage Company.

Q. Are you familiar with the books and records of the Safe Deposit Company? A. Yes, sir.

Q. Have you made a search of those records to determine whether a safe deposit box has been rented in the name of Frank Costello or Loretta B. Costello? A. Yes, sir.

Q. Have you produced records relating to that account? A. I have.

Q. May I have them, please? A. (Witness hands to Mr. Seymour.)

Mr. Seymour: Will you mark this?

(Marked Government's Exhibit 77 for identification.)

Mr. Seymour: Would you mark these as one exhibit?

(Marked Government's Exhibit 78 for identification.)

Q. Miss Carmichael, I hand you Government's Exhibit 77 for identification. Would you tell us, please, what that is? A. It is signature card belonging to the records of the Port Washington Safe Deposit & Storage Company bearing the signatures of Mrs. Loretta B. Costello and Frank Costello.

Q. I also hand you Government's Exhibit 78 for (259) identification. Would you tell us, please, what the sheets constituting that exhibit are? A. These are sheets extracted from the cash ledger showing the payments made at different intervals for the box rented by Mr. and Mrs. Costello.

The Court: Showing what? The payments made?

The Witness: The payments made.

Q. Now, Miss Carmichael, are those two records, Government's Exhibits 77 and 78 for identification, records kept by the bank in the regular course of its business? A. Yes, sir.

Q. And is it the regular course of the business of the Safe Deposit Company to keep such records? A. Yes, sir.

Q. Before my question was whether they were records kept by the bank in the regular course of business; I meant to ask whether they were records kept by the Saf Deposit Company. A. That is correct.

Mr. Seymour: At this time, if the Court please, the Government respectfully offers Government's Exhibits 77 for identification and 78 for identifica-

tion, asking leave to substitute photostats at the close of counsel's cross examination.

The Court: You may do so.

(260) Mr. Fennelly: I object to them as irrelevant and immaterial, and as to Exhibit 78 that it contains only, I believe, four entries even pertaining to Mrs. Loretta Costello and none to the defendant Frank Costello.

The Court: Overruled. They may be received.

(Government's Exhibits 77 and 78 for identification received in evidence.)

Q. Now, Miss Carmichael, I hand you Government's Exhibits 77 and 78. Would you tell us, please, from Exhibit 77 the date the safe deposit box was opened? A. March the 16th, 1945.

Q. Now, referring to Exhibit 78, does that exhibit reflect all rental payments made for that box between the time of its opening up until the end of 1949? A. Yes, sir.

Q. Would you tell us, please, by date what payments were made as rentals on that box? The total amounts of the rentals. A. On March 17 the cash ledger shows that payment was received for Loretta B. Costello, Box No. 530-A, for $25, plus tax of $5, making total of $30.

On March 12th the cash ledger shows a payment received from—

The Court: What year?

The Witness: This is 1947.

The Court: 1947.

(261) A. (Continuing) A payment received from Loretta B. Costello for Box 530-A for $12.50, tax $2.50, total of $15.

On March 8, 1948 a payment received from Loretta B.

Costello for Box No. 530-A for $12.50, tax $2.50, a total of $15.

May 23, 1949, a payment received from Loretta B. Costello for Box 530-A in the amount of $12.50 plus $2.50 tax, a total of $15.

Q. Now, Miss Carmichael, are you familiar with the records of the Meadowbrook Bank relating to the making of loans by the bank? A. Yes, sir.

Q. Can you tell us, please, whether—

The Court: Pardon me, Mr. Seymour. Are you going into another subject now?

Mr. Seymour: Yes, your Honor.

By the Court:

Q. On the safe deposit box, Miss Carmichael, can you tell us what was the regular annual rental for that box? A. $12.50.

Q. And do the payments that you have read to us represent all the payments that were due on that box for the four years? A. The first year, upon the opening of the box, in '44, I believe it was, there were two years' payments received.

(262) Q. Yes. But all the payments that were received are all the payments that were due for the use of that box for the four years? A. Yes, the box—may I see the signature card? These payments were made always in advance and the box was closed out March 10, 1950.

The Court: Very well.

By Mr. Seymour:

Q. You said a moment ago, in answer to the Court's question, that you believed it was 1944. Would you look— A. 1945. I beg your pardon.

Marjorie A. Carmichael—for Government—Cross

The Court: '45 she said.

A. It is March 16, 1945.

Q. Referring back to my question concerning the records of the bank relating to the making of loans by the bank, can you tell us, please, whether those records show, between the years 1937 and 1949, any loans made to Frank Costello or Loretta B. Costello? A. No, sir.

Mr. Seymour: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Mrs. Carmichael, did you appear before the grand jury to testify, that is, the grand jury that returned the indictment in this case? A. No, sir.

Q. None of your bank records were subpoenaed before that grand jury? A. No, sir.

(263) Q. Were they?

Mr. Seymour: I object to that.

The Court: She has answered.

Mr. Fennelly: May I see the signature card?

Q. Now, do you remember, back around 1931 through 1933, that there were runs on banks? A. Yes, I do.

Q. Depositors withdrawing their money? A. (No answer.)

Q. And as a result many banks closed, did they not, through that period, Bank of the United States, Harriman National Bank, is that right?

Mr. Seymour: If your Honor please, I object to that question as going afield of the direct examination.

The Court: It is, but I will allow it.

A. That is correct.

Q. And your depositors were feeling that banks were insecure places to keep their money, isn't that right?

The Court: Sustained.

Going to make the witness an expert on feelings of depositors?

Mr. Fennelly: I think it is a matter of public knowledge.

The Court: What she knows about the feelings (264) of depositors?

Mr. Fennelly: No, the fact.

The Court: Oh, I see. Very well, all right.

Is that all?

Mr. Fennelly: That is all, your Honor.

The Court: Very well. You may step down.

Do you have some further questions?

Mr. Seymour: No, your Honor, I just ask leave to substitute photostats at this time, so I may return the original documents.

The Court: You may do that.

Mr. Seymour: Perhaps, to expedite the Court's business, I will do it the recess.

The Court: All right.

Mr. Seymour: And I will proceed to the next witness.

The Witness: May I wait for my records?

The Court: Yes, you may wait for your records.

(Witness excused.)

Mr. Seymour: The Government calls Charles T. Maurer.

Charles T. Maurer—for Government—Direct

(265) CHARLES T. MAURER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Maurer, would you keep your voice up, please, so all the ladies and gentlemen of the jury can hear?

Where do you live? A. 127 40th Street, Union City, New Jersey.

Q. What is your occupation? A. I am an assistant manager of the Central Savings Bank.

Q. Where is the Central Savings Bank located? A. 2100 Broadway, New York City.

Q. How long have you been employed by the bank? A. Thirty years.

Q. Are you familiar with the books and records of the bank? A. I am.

Q. Can you tell us, please, whether the books and records of your bank show any deposits in the name—any account, I beg your pardon, in the names of Frank Costello or Loretta B. Costello during the years 1937 through 1949? A. Yes, they do.

Q. What account do they show? A. A savings account in the name of Loretta B. Costello.

(266) Q. Have you produced records here today relating to that account? A. I have.

Mr. Seymour: May I have them, please?

(Witness hands papers to Mr. Seymour.)

Mr. Seymour: Mark that, please?

(Marked Government's Exhibit 79 for identification.)

Mr. Seymour: And that, if you will.

(Marked Government's Exhibit 80 for identification.)

Mr. Seymour: And these as one exhibit.

(Marked Government's Exhibit 81 for identification.)

Q. Mr. Maurer, I hand you Government's Exhibits 79, 80 and 81 for identification. Looking first at Government's Exhibit 79 for identification, would you tell us what that is, please? A. That is the bank's signature record of the account.

Q. Of what account? A. Account No. 267698 in the name of Loretta B. Costello individually.

Q. Would you look at Government's Exhibit 80 for identification. Can you tell us what that is? A. That is the bank's ledger record pertaining to account 267698 in the name of Loretta B. Costello.

Q. Finally would you look at Government's Exhibit 81 for identification and tell us what those sheets constitute? A. These are tickets in the bank's files (267) covering deposit transactions on the account.

Q. During what period, sir? A. Covering a period from February 9, 1944 up to 1949.

Q. Can you tell us, sir, whether those are all the deposit tickets presently in the files of your bank relating to deposits made in that account from the time it was opened up until December 31, 1949? A. Yes, these are all the tickets that we have available.

Q. Now, sir, are all three exhibits, 79, 80 and 81 for identification, records kept by the bank in the regular course of its business? A. They are.

Q. And is it the regular course of the bank's business to keep those records? A. It is.

Q. May I have them, please? A. (Witness hands papers to Mr. Seymour.)

Mr. Seymour: At this time, if the Court please, the Government respectfully offers in evidence Exhibits 79, 80 and 81 for identification.

Mr. Fennelly: I object to them as irrelevant and immaterial, being that they relate to Mrs. Costello.

The Court: Overruled. They may be received.

(Marked Government's Exhibits 79, 80 and 81 in evidence.)

Q. Mr. Maurer, I hand you Government's Exhibit 79 (268) which I believe you said was the signature card for the account of Loretta B. Costello. Can you tell us, please, when was that account opened? A. April 26, 1943.

Q. Can you tell us, from your knowledge of the bank's practices, who customarily fills out the entries on the face of that signature card? A. The depositor.

Q. Can you tell us what Government's Exhibit 79 shows as the address for the depositor? A. 115 Central Park West.

Q. Can you tell us, please, what is shown as the depositor's occupation? A. Housewife.

Q. Mr. Maurer, I hand you Government's Exhibit 80. That, I believe you said, was the ledger card for that account, is that right? A. That is correct.

Q. Can you tell us from that card the amount on deposit as a closing balance at the end of each year from the opening of that account through the end of 1949? A. Yes, I can.

Q. Would you do so, please? A. At the end of 1943 the balance was $1,511.78.

At the end of 1944 it was $3,044.54.

At the end of 1945 the balance was $4,101.65.

Close of 1946 it was $4,565.89.

(269) Close of 1947 the balance was $4,634.62.

Close of 1948 the balance was $4,704.38.

End of 1949 it was $4,798.93.

Q. Thank you, sir. I hand you now Government's Exhibit 81. Those, I believe you said, were deposit tickets on that account? A. That is correct.

Q. Did I understand you to say that those were all the deposit tickets presently available from the opening of that account until the end of 1949? A. That is correct.

Q. Would you tell us, please, sir, the dates, amounts and form of deposits shown on those tickets? A. Under date of February 9, 1944 a cash deposit in the amount of $500 was credited to the account

July 26, 1944, $500 in cash was credited to the account.

November 29, 1944, $500 in cash credited to the account.

On March 14, 1945, $1,000 in cash was credited to the account.

And on July 31, 1946, $400 in cash was credited to the account.

Q. Mr. Maurer, with respect to all those deposits, you said that they were made in cash. By that do you mean currency? A. That is right.

(270) Q. Actual money? A. Yes, sir, right.

Q. Now, Mr. Maurer, are you familiar with the books and records kept by your bank concerning the making of loans? A. I am.

Q. By the bank. I beg your pardon? A. I am.

Q. Can you tell us, sir, whether those records show any loans having been made to Frank Costello or Loretta B. Costello during the year 1937 through 1949? A. No loans appeared on the bank's records as having been made during the period mentioned to either Frank or Loretta Costello.

Charles T. Maurer—for Government—Cross

Mr. Seymour: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Mr. Maurer, you did not appear before the grand jury that returned the indictment in this case, did you? A. I did not.

Q. None of the records that you have produced today were produced before that grand jury, were they?

Mr. Seymour: I object to that question, your Honor.

The Court: I will allow him to tell whether he knows that or not.

Do you know whether any of them were?

The Witness: I do not.

(271) Mr. Fennelly: That is all.

Mr. Seymour: May I have leave to substitute photostats for the original records?

The Court: You may.

Mr. Seymour: Will your Honor care to take the customary recess?

The Court: Oh, yes.

(Jury retires.)

(Short recess.)

(272) The Court: Before you start, let the record show that the Court is taking the minutes of the Grand Jury that were referred to the other day and is sealing them and marking them Court's Exhibit 1.

Mr. Clerk, will you seal this?

The Clerk: Yes, sir.

The Court: And I will make the identification.